

February 25th, 1959

COCOM Document No. 2869.84

COORDINATING COMMITTEE

*56 General*

RECORD OF DISCUSSION

ON

REVIEW OF THE STRATEGIC EXPORT CONTROLS - ADMINISTRATIVE PRINCIPLE NO. 3.

February 16th, 1959

Present: Belgium(Luxembourg), Canada, Denmark, France, Germany, Italy, Japan, Netherlands, United Kingdom, United States.

References: COCOM 2401, 2869.5, 2869.55, 2869.57, 2869.61, 2869.64, 2869.72, 2869.73, 2869.76, 2869.80, 2869.82 and Secretariat Paper No. 102.

1. The CHAIRMAN stated that there were two questions before the Committee concerning Administrative Principle No. 3. The first one was the question of the phrase "a principal element" as opposed to "the principal element" and the second was the United States proposal to add a sub-paragraph referring to the acquisition of unique technological know-how (COCOM 2869.82 paragraph 2.b.). He invited Delegates to give the views of their authorities on these points.
2. The FRENCH Delegate said that the Committee already knew that his Delegation had had very firm instructions to insist that Administrative Principle No. 3 should remain unchanged because it had proved quite satisfactory in the past. In view of the fact, however, that other Members of the Committee were equally firm in maintaining an opposing view, the French Delegation, in an effort to make agreement possible, could now agree to the deletion of the reference to value and quantity on condition that a note was added to say that the principal element referred equally to technology considerations as well as to the quantity or value of the item involved. The French Delegation, of course, still wished to retain the definite article before the phrase "principal element" since the French text had always referred to "l'élément principal".
3. The UNITED KINGDOM Delegate said that his authorities would prefer to have the phrase "the principal element" and to omit the reference to value and quantity. If this was not acceptable to the Committee, they, like the Belgian, Japanese and Netherlands Delegations, were prepared to continue with the present wording unchanged.
4. The NETHERLANDS Delegate said that, like the French Delegation, his position was somewhat less rigid than it had been in the past and he shared the French views entirely. His authorities considered that the intention of this Principle was well understood in the Committee, as it had been in the past. Finally the Delegate said that his authorities were not in favour of the addition proposed by the United States although they did not consider it unreasonable.

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5. The ITALIAN Delegate said that his authorities preferred the phrase "the principal element" and he did not think they would have any difficulty in accepting a note such as had been suggested by the French Delegate. He had no instructions on the additional paragraph proposed by the United States but he believed his authorities, after the recent developments in the Committee discussions and the withdrawal of the United Kingdom proposal, would rather favour a text which reproduced the gist of the old Principle.

6. The BELGIAN Delegate said that his authorities could accept the phrase "the principal element" together with a note as proposed by the French Delegation.

7. The GERMAN Delegate said that his authorities could accept the addition of the paragraph proposed by the United States. It was their understanding that the items to which it referred were those mentioned in the special list originally proposed by the United Kingdom.

8. The CANADIAN Delegate stated that his authorities preferred the phrase "the principal element" without the reference to value and quantity. They were openminded on the additional paragraph proposed by the United States.

9. The UNITED KINGDOM Delegate then referred to the United States proposal in paragraph 2.b.(ii) of COCOM Document 2869.82. He thanked the United States Delegation for an ingenious attempt to fill the gap left by the rejection of the United Kingdom proposals on technological know-how. His authorities considered the United States proposals to be both too sweeping and too vague and they would present serious difficulties of interpretation which would make uniformity of application impossible to achieve. An essential feature of the United Kingdom proposal had been a list of items from which unique technological know-how could be extracted. On the basis of the United States proposal, however, it would be impossible to identify items as having been maintained or put on the International Lists by reference to criterion (b) alone. In practice, therefore, the United States proposal appeared to apply to the whole field of embargo and it was impossible for his authorities to accept such a breadth of coverage. Furthermore there was no agreed view in the Committee on what represented unique technological know-how. He recalled the long series of technical exchanges between the French Delegation and his own when the special list of little over a dozen items had been proposed. This showed how greatly opinions might differ. As the interpretation of the Administrative Principles lay with each Member Country, it would be impossible to hope for uniformity in the face of interpretations based on widely varying assessments of the facts. Without uniformity there could be no real protection of technological know-how.

10. The JAPANESE Delegate said that his authorities had studied the United States proposal with care and their conclusions were almost identical to those of the United Kingdom. They attached great importance to the uniformity of the system and they feared that since the United States proposal gave a wide measure of discretion to Member Countries, it would lead to lack of uniformity. They too remembered the widely differing opinions which had been expressed by experts on the technical know-how question and recalled that some Delegations had held that there was little important technology which should be kept from the Soviet Bloc even in the special list of items proposed by the United Kingdom. The Japanese authorities had serious doubts that the United States proposal would prove satisfactory in practice.

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11. The DANISH Delegate said that his authorities accepted the phrase "the principal element" without a reference to value and quantity. He had no final instructions on the United States proposal but it was his personal opinion that it would not prove acceptable to his authorities. His Government had accepted first the United Kingdom and then the Italian proposal, which both retained a special list. The latter would have ensured that the export of unique technology was at least brought to the knowledge of the Committee and thus provided the basis for uniformity of interpretation. He felt that the United States proposal gave no guarantee for such uniform application.

12. The UNITED STATES Delegate thanked his German colleague for accepting the proposal concerning technological know-how, albeit with the limitation in paragraph 7 above, and also the Canadian Delegate for having indicated that there was a possibility of his authorities' accepting it. In framing the proposal his authorities had tried to keep in mind the difficulties Member Countries had had in accepting a special list of items and it now seemed that the problem was that there would be too little uniformity without a special list. The United States proposal did at least give an objective standard in its reference to the technology criterion and focused attention on the Committee's concern with technology. Although the Delegate recognised that the interpretations of each Member Country could differ somewhat, he felt that there were two factors which ameliorated this situation. First, cases of doubt could always be referred to the Committee; secondly, the absence of complete assurance of uniformity applied to all the administrative principles, but in the view of the United States authorities, the common intent and objectives of the Member Countries should enable considerable uniformity to be achieved.

13. The CHAIRMAN summed up the discussion by saying that his own interpretation of the difficulty facing the Committee was the possibility of non-uniformity, especially if each Member Country gave its own interpretation to whether embargo components could be utilised within the meaning of embargo criterion (b). He felt that a possible solution to this difficulty might lie in the adoption of a note qualifying the phrase "the principal element" as had been suggested by the French Delegation. He suggested that Delegates submit the following wording for such a note to their authorities:

"In judging whether the embargo component or components are to be considered the principal element, the exporting country should weigh the factors of quantity, value and technological know-how involved."

14. The COMMITTEE agreed to continue the discussion on March 2nd.

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